THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.20211 of 2006

% 06.09.2007

Between:
Khan Abdul Gaffar Khan
Memorial Educational Society,
rep. by its General Secretary-cum-
Correspondent

…Petitioner

AND

The District Registrar of Societies,
Nellore, and others.

.....Respondents

! COUNSEL FOR Petitioner: Sri Vedula Venkataramana

^ COUNSEL FOR RESPONDENT: Sri D. Prakash Reddy, for R-2

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> Head Note:

? CITATIONS:

AIR 1971 SC 2355

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JUDGMENT:

An internal dispute among the members of a Society, registered under the A.P. Societies Registration Act (for short '*the Act*'), has given rise to this writ petition.

Khan Abdul Gaffar Khan Memorial Educational Society (for short 'the Society) was registered on 28-12-1990, vide registration No.284/1990. It had established some educational institutions. The Society mostly comprised of members, belonging to Muslim community. Over a period of time, non-muslims, including one, Ch.Anji Reddy, the 2nd respondent, were admitted as members. The 2nd respondent had assumed the role of Correspondent of the Society and became part of management. At a subsequent stage, the Society, represented by the founder President, Mr.Syed Akram Mohiuddin Ahmed, had convened a General Body Meeting,
on 05-04-2006, and resolved *inter alia,* to remove some of the members, including the 2nd respondent. Having done so, they have forwarded the copy of the resolution to the Registrar of Societies, Nellore, the 3rd respondent. The structural changes in the Society were taken on record and approved by the Registrar with effect from 21-04-2006.

The 2nd respondent raised an objection to the steps taken by

the 3rd respondent. Thereupon, the 3rd respondent issued notice to the petitioner and issued proceedings dated 28-06-2006, cancelling the earlier proceedings. The petitioner filed W.P.No.13497 of 2006, aggrieved by the proceedings dated 28-06-2006. This Court took the view, that the procedure prescribed under Section 8 of the Act was not followed and accordingly remanded the matter to the 3rd respondent for fresh consideration and disposal. On such remand, the 3rd respondent passed an order dated 29-03-2006, holding that the resolution dated 05-04-2006, removing the 2nd respondent and others, as members of the Society, is contrary to law, and that the 2nd respondent is entitled to function as Secretary-cum-Correspondent of the Society and its institutions.
The same is challenged in this writ petition.

It is contended that the 3rd respondent has no jurisdiction to adjudicate upon the internal disputes, and the order passed by her is contrary to the provisions of the Act. Certain alleged factual inadequacies were also pointed out.

On behalf of the 2nd respondent, a detailed counter-affidavit is filed. It is stated that the entire proceedings came to be initiated only at the instance of the petitioner, and it cannot take exception for the outcome thereof. The circumstances under which he and other members came to be inducted, are stated. It is alleged that the steps taken by the petitioner in removing certain members are wholly illegal. It is further stated that the order passed by this Court in W.P.No.13497 of 2006 will operate as *res judicata*.

Sri Vedula Venkataramana, learned counsel for the petitioner submits that the application presented by his client before the 3rd respondent was informal in nature, and the same cannot give rise

to adjudication of disputes. He contends that the order in W.P.No.13497 of 2006 cannot operate as *res judicata*, since it did not deal with the question of jurisdiction, and even assuming that any observations touching that question were made, there are of no consequence, in view of the judgment of the Supreme Court in ***Muthura Prasad v. Dossibai***[1].

Sri D. Prakash Reddy, learned Senior Counsel appearing for the 2nd respondent, on the other hand, submits that the representation submitted on behalf of the petitioner was comprehensive in nature, including the one, relating to certain amendments, and in that view of the matter, it was competent for the 3rd respondent to pass the impugned order. He contends that, it is at the instance of the petitioner, that the matter was remanded to the 3rd respondent and simply because the result had gone against them, the petitioner cannot object to the impugned order.

The Act is a self-contained Code. Apart from prescribing the procedure for registration of a Society, and the manner in which, they must be run, it prescribes the procedure for resolution of disputes also. Any Society registered under the Act has to be managed in accordance with the bye-laws, that are registered and approved by the Registrar. If any amendments are caused to the bye-laws, they would come into force only after being approved and registered by the Registrar, under Section 8 of the Act. Section 23 of the Act mandates that any disputes, between the Society and its members, or members *inter se*, touching upon the management and administration of the Society, must be resolved by filing a petition under Section 23 of the Act, in the District Court, within whose jurisdiction the Society operates. The Registrar is not conferred with any power to resolve the

internal disputes of the Society, or among its members. His role is restricted to the one of registering the societies, and thereafter to register the amendments to the bye-laws.

The petitioner claims to have passed a resolution on 05-04-2006, removing the 2nd respondent and certain others, as members. This did not result in any amendment to the bye-laws. Therefore, there was no occasion for the petitioner to approach the 3rd respondent. However, the 3rd respondent had issued proceedings dated 21-04-2006, conveying a semblance of acceptance of the resolution and putting a seal of approval upon it.

The 2nd respondent naturally felt aggrieved by the said action. Therefore, he filed an application to set aside the proceedings dated 21-04-2006. On finding that the 2nd respondent was not issued any notice before the proceedings dated 21-04-2006 were issued, the 3rd respondent passed an order dated 28-06-2006, nullifying its earlier order dated 21-04-2006. In W.P.No.13497 of 2006 these proceedings were set aside and the matter was remanded to the 3rd respondent for fresh consideration and disposal. Permission was accorded to the parties to adduce evidence. The 3rd respondent undertook detailed discussion and recorded a finding upon the validity of the resolution dated 05-04-2006, and the consequences thereof.

The whole controversy revolves around the question, as to whether the 3rd respondent is conferred with the power to adjudicate the internal disputes, or to declare the validity or otherwise of a resolution passed by a Society. The order passed by this Court in W.P.No.13497 of 2006 cannot be treated as final pronouncement on

this aspect, inasmuch as the issue was neither canvassed nor decided. Secondly, the principle of *res judicata* does not apply to the matters of this nature. Whether or not the Authority under a statute had jurisdiction to decide a particular matter, would depend upon the scope of the provisions of the concerned statute, and not upon the acts or omissions of the parties to the dispute. I n ***Muthura Prasad v. Dossibai*** *(Supra),* the Supreme Court held as under:

> "A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as
> *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

Since the question of jurisdiction of the 3rd respondent was not decided in W.P.No.13497 of 2006, the order passed therein cannot operate as *res judicata*, against the present writ petition.

The only occasion for the petitioner to approach the 3rd respondent and for the latter, to exercise her jurisdiction is, where the bye-laws of the Society are amended, and such amendment is presented for approval and registration. Though it is in the discretion of any society to amend its bye-laws, the Registering Authority has to satisfy itself that the amendments are not opposed to public policy, and are in the interest of the society, at large.

In the instant case, the resolution dated 05-04-2006 did not pertain to amendment to any bye-laws. Its context was limited to the removal of certain persons from the membership of the Society. Therefore, there was no occasion or basis for the 3rd respondent to pronounce upon the

legality or correctness of the resolution, dated 05-04-2006, much less its consequences.

It is not as if that the parties aggrieved in such cases do not have any remedies. If a resolution is not validly passed, or, if anyone is acting contrary to the provisions of the Act, or the bye-laws of the Society, the aggrieved party can approach the District Court by filing a petition under Section 23 of the Act. On the other hand,
if anyone feels that a validly passed resolution is not being acted upon, he too can have recourse to same remedy. Under these circumstances, the order passed by the 3rd respondent is nothing, but usurps into the powers of a Civil Court, conferred under Section 23 of the Act. The 3rd respondent cannot be found fault with, because it is the petitioner who initiated proceedings before her, and it is at the instance of the petitioner and the 2nd respondent, that the matter was remanded for fresh consideration. No effort was made to verify the exact scope of the powers of the 3rd respondent, *vis-à-vis* the nature of dispute.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. It is further held that the initiation of proceedings by the petitioner, before the 3rd respondent, is without basis; and all the proceedings, commencing from the order dated 21-04-2006, to the impugned order; are set aside. It is left open to the parties to work out the remedies by filing O.P. under Section 23 of the Act, before the Civil Court.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.06-09-2007.

***Note**:*
L.R. copy to be marked.
(B/O)
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[1] AIR 1971 SC 2355